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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/532,277	04/21/2005	Andrea Drollinger	14150	8515

Orum & Roth 53 West Jackson Blvd Chicago, IL 60604-3606	7590	06/05/2007
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EXAMINER	
KAVANAUGH, JOHN T	

ART UNIT	PAPER NUMBER
3728	

MAIL DATE	DELIVERY MODE
06/05/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/532,277

Applicant(s)

DROLLINGER ET AL.

Examiner

Ted Kavanaugh

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-56 is/are pending in the application.
- 4a) Of the above claim(s) 6-10, 12-22 and 28-43 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 11, 23-27 and 44-56 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 4-21-2005.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Election/Restrictions*

1. Claims 6-10, 12-22, 28-43 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on April 23, 2007. Claim 12 has been included above since it clearly does not read on species IV (figure 8). Claim 31 has also been withdrawn since figure 8 doesn't have an arc-shaped slide which is undetachably held in a matching arc-shaped groove.
2. Applicant's election without traverse of species IV (figure 8) in the reply filed on April 23, 2007 is acknowledged.

### *Drawings*

3. The drawings are objected to because the plane upon which a sectional view is taken should be indicated on the general view by a broken line, the ends of which should be designated by numerals corresponding to the figure number of the sectional view and have arrows applied to indicate the direction in which the view is taken, see CFR 1.84(h)(3). The specification indicated that figure 1 should have sectional lines A—A and B—B in figure 1. However figure 1 doesn't show these lines. Moreover, A—A and B—B in figure 1 should be 2—2 and 3—3 respectively to satisfy CFR 1.84(h)(3). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

4. Claims 1-5, 11, 23-27, 44-56 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, the “downwardly projecting ground-engaging elements” and “the mounting elements” are only functionally introduced. They are not positively claimed. However, throughout the claims they are further being defined and therefore it is not clear if applicant is claiming these elements or not. It would appear to be applicant’s intent to claim these features since only a sport shoe with no other additional features would be claimed. The examiner is treating the claims below as if these features are being claimed.

In claims 44 and 45, the “slide” lacks proper antecedent basis. Also, it is not clear which element in the elected species IV (figure 8), if any, represents the slide.

In claims 54-56, the “two supports” lacks proper antecedent basis. It is also not clear which elements applicant is referring to.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

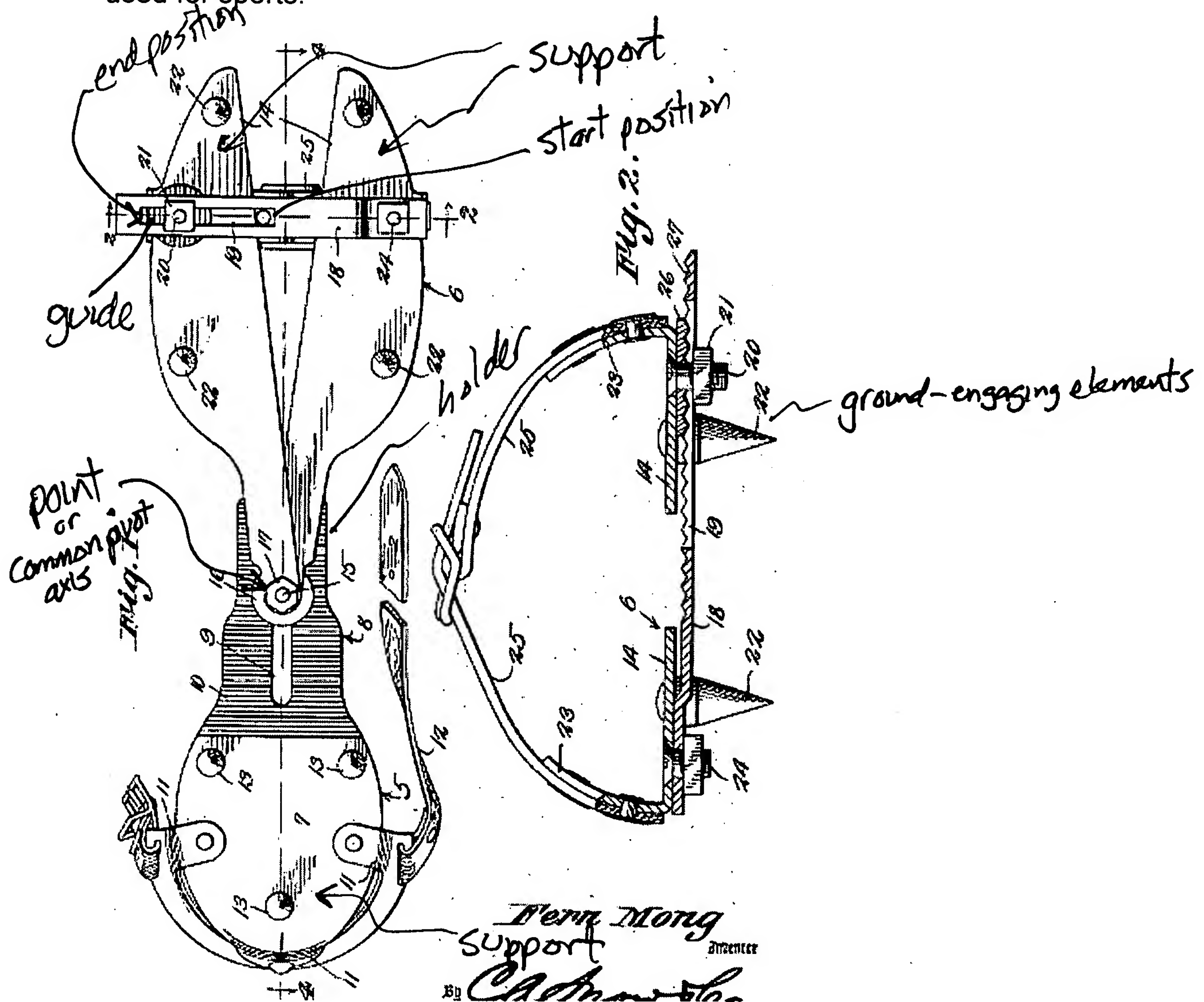
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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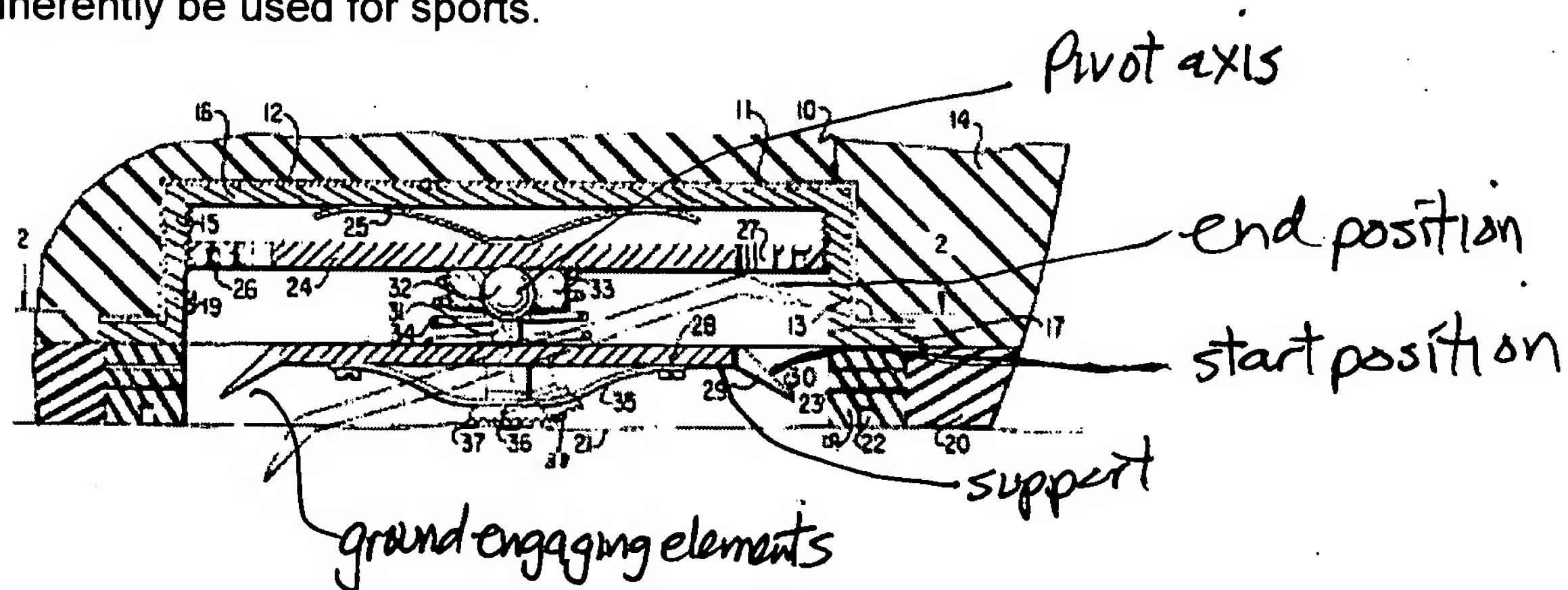
6. Claims 1-5, 11, 25-27, 48-56 are rejected under 35 U.S.C. 102(b) as being anticipated by US 2002706 (Mong).

Mong teaches an ice creeper (sole with downwardly projecting ground elements) which is detachably mounted on a shoe, wherein the ice creeper has two support plates with ground-engaging elements which are guided and held to move forward and backward along an arc; see the marked-up figure below. The shoe can inherently be used for sports.



7. Claims 1-5,11,46,47 are rejected under 35 U.S.C. 102(b) as being anticipated by US 3631614 (Rice).

Rice teaches an antislip footpiece for a shoe having structure as claimed. See the marked-up figure below. The support (plate 28) with downwardly projecting ground-engaging elements (29) are guided and held to move forward and backward along an arc; figure 1 shows in dashed lines the plate moving about the arc. The shoe can inherently be used for sports.



8. Claims 1-5,11,46,47 are rejected under 35 U.S.C. 102(b) as being anticipated by US 6035559 (Freed).



Freed teaches a sports shoe (see figure 13) with downward ground engaging elements extending from a support (6) wherein the ground-engaging elements, are guided and held to move forward and backward along an arc (the plate 6 rotates) and moves back to its original position by means of a return spring (118). See figure 22 and 23 for different variations which have at least two supports.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 23,24,44,45 are rejected under 35 U.S.C. 103(a) as being unpatentable over any of the following references: Mong, Freed and Rice.

All of the shoes as taught above don't specifically teach the support, the slide and the sole made out of plastic material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the support, the slide and the sole out of plastic material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

***Conclusion***

1. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

2. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including:

-“The reply must present arguments pointing out the *specific* distinctions believed to render the claims, including any newly presented claims, patentable over any applied references.”

--“A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section.”

-Moreover, “The prompt development of a clear issue requires that the replies of the applicant meet the objections to and rejections of the claims. Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06” MPEP 714.02. The “disclosure” includes the claims, the specification and the drawings.

3. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). Other useful information can be obtained at the PTO Home Page at [www.uspto.gov](http://www.uspto.gov).

In order to avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly into the Center at (571) 273-8300 **(FORMAL FAXES ONLY)**. Please identify Examiner Ted Kavanaugh of Art Unit 3728 at the top of your cover sheet.


Any inquiry concerning the MERITS of this examination from the examiner should be directed to Ted Kavanaugh whose telephone number is (571) 272-4556. The examiner can normally be reached from 6AM - 4PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562.



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Ted Kavanaugh  
Primary Examiner  
Art Unit 3728

TK  
May 20, 2007